United Nations CCPR/C/110/DR/1960/2010

International Covenant on Civil and Political Rights

Distr.: General
20 May 2014
English
Original: French

Human Rights Committee

Communication No. 1960/2010

Views adopted by the Committee at its 110th session, 10–28 March 2014

Submitted by:	Claude Ory (represented by counsel, Jérôme Weinhard)
Alleged victim:	The author
State party:	France
Date of communication:	1 April 2010 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 July 2010 (not issued in document form)
Date of adoption of Views:	28 March 2014
Subject matter:	Conviction of a member of the Traveller community for lack of vehicle insurance and travel permit
Procedural issues:	Examination of the same matter under another international procedure; exhaustion of domestic remedies
Substantive issues:	Freedom of movement; discrimination and equal protection of the law
Articles of the Covenant:	12, paragraph 1, and 26
Article of the Optional Protocol:	5, paragraph 2 (a) and (b)

GE.14-03197 (E) 030614 060614

1403197

Please recycle

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1960/2010*

Submitted by:	Claude Ory (represented by counsel, Jérôme Weinhard)
Alleged victim:	The author
State party:	France
Date of communication:	1 April 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 March 2014,

Having concluded its consideration of communication No. 1960/2010, submitted to the Human Rights Committee by Claude Ory under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication dated 1 April 2010 is Claude Ory, born on 1 December 1980 at Château-Gontier, France. He claims to be a victim of a violation by France of his rights under articles 12, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

1.2 On 18 October 2010, the Special Rapporteur on new communications and interim measures decided that the admissibility of the communication should be considered jointly with the merits.

---

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

Pursuant to rule 90 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the consideration of this communication.

An individual opinion signed by Mr. Salvioli is appended to the text of the present Views.

The facts as presented by the author

2.1 The author is a member of the Traveller community.[1] He lives in a caravan, in Le Mans (department of Sarthe), and is thus subject to Act No. 69-3 of 3 January 1969[2] and the associated Decree No. 70-708 of 31 July 1970, which require him to have a travel permit (*titre de circulation*) that must be stamped regularly by the authorities,[3] failing which he is liable to criminal sanctions.[4] In 2004, as he did not have a regular income, the author held a travel card (*carnet de circulation*), issued on 2 February 1998, that needed to be stamped by the police every three months and had last been stamped on 27 August 2003.

2.2 On 29 February 2004, while he was driving his truck to work, the author was checked by gendarmes in the commune of Mézeray (department of Sarthe). He was found to have neither vehicle insurance nor a stamp in his travel card. On 11 March 2006, when he was once again checked by gendarmes in Aubigné-Racan (Sarthe), he was informed of the consequences of the two offences committed on 29 February 2004. He was taken to the station and was questioned for four hours. He was informed that the La Flèche (Sarthe) police court had issued a judgement in absentia dated 23 November 2005, in which he had been ordered to pay a fine of 150 euros for not having a valid travel permit; he was also fined 300 euros and had his driving licence suspended for one month for not having insurance. The address on the court summons referred to his travel permit and his commune of registration. Thus, since the town hall of Arnage (Sarthe) was not his habitual residence and he did not receive his mail there, it had not been possible to inform him that the hearing was to be held, and he was therefore tried in absentia.

2.3 The author has no fixed abode or residence in France and lives in his vehicle on a permanent basis. He acknowledges that he had not had his travel booklet stamped by the administrative authority within the prescribed time limit. He filed an application to have the judgement in absentia of 23 November 2005 set aside, and the deputy prosecutor of Le Mans summoned him to a hearing at the La Flèche police court on 24 May 2006. He requested the assistance of counsel for his defence, which he was able to obtain through legal aid. After he requested a deferral, his case was finally heard on 27 September 2006. His defence lawyer asked for the case to be dismissed, citing Protocol 4 to the European Convention on Human Rights, which, in its article 2, provides that everyone who is lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence. On 20 December 2006, the court overruled the objection based on the assertion that the report noting the absence of a stamp was invalid, found the author guilty of that offence, and sentenced him to a fine of 100 euros (instead of the 150 euros initially set).

---

[1] Administrative term designating the Roma community in France. The term was used in Act No. 69-3 of 1969 in place of the term "nomad", which had been used in the Act of 16 July 1912 concerning the exercise of itinerant trades and regulating the movement of nomads.

[2] Act No. 69-3 of 3 January 1969 on the exercise of itinerant activities and the regime applicable to persons travelling in France without a fixed abode or residence.

[3] Pursuant to article 4 of the Act of 3 January 1969, persons who have no fixed abode or residence, who live in a mobile shelter and have a regular income receive a travel booklet (*livret de circulation*), which must be stamped "at intervals not less than three months in length". Persons who have no regular income, on the other hand, are issued a travel card (*carnet de circulation*), which must be stamped every three months (art. 5).

[4] Article 20 of Decree No. 70-708 of 31 July 1970, implementing Title I and certain provisions of Title II of Act No. 69-3 of 3 January 1969, on the exercise of itinerant activities and the regime applicable to persons travelling in France who have no fixed abode or residence, provides that: "Persons who do not have their travel permit stamped within the time limits laid down in article 5 of the Act of 3 January 1969 or article 18, paragraph 2, of the present Decree shall be liable to the fine provided for category 5 minor offences."

2.4 On 28 December 2006, the author filed an appeal against that judgement with the Court of Appeal of Angers (Maine-et-Loire). He once again requested legal assistance, which was granted. During the proceedings, his lawyer argued that the offence in question constituted discrimination under article 14 of the European Convention on Human Rights, which prohibits discrimination. The author asserts, firstly, that persons who exercise itinerant activities or trades are exempted from the obligation to have a stamped travel card and, secondly, that the provisions apply exclusively to persons who dwell permanently in a vehicle, trailer or any other mobile shelter while other persons who have no fixed abode or residence, such as homeless persons or bargees, are exempted. The President of the Court of Appeal considered referring the case to the Court of Justice of the European Union for a preliminary ruling.[5] In the end, however, on 19 April 2007, he refused the appeal on the grounds that the author's situation was of his own choosing and made him subject to specific obligations that served the national public interest, which therefore were in no way discriminatory; he reduced the fine to 50 euros. The author lodged an appeal in cassation on 19 April 2007. His request for legal aid was refused on the basis of a lack of serious grounds. He was thus not able to retain counsel and his appeal was dismissed by the court of cassation on 4 March 2008.

2.5 On 22 December 2008, the author filed an application in respect of the same case with the European Court of Human Rights. On 1 September 2009, the Court declared the application inadmissible under article 35, paragraph 1, of the Convention, since more than six months had elapsed between the final decision at the national level (of the court of cassation) and the submission of the application.

The complaint

3.1 The author states, firstly, that he does not challenge the validity of the first charge (lack of vehicle insurance), but does contest the second, i.e., the failure to have a stamped travel card while having had no fixed abode or residence in France for more than six months, which falls within the scope of article 3 of the Act of 3 January 1969.

3.2 In respect of the infringement of the freedom of movement, the author notes that French law requires him to have a travel permit and to present it to law enforcement officials upon request, under penalty of criminal sanctions. He recalls that this is part of an old legal regime dating back to the nineteenth century; the modern travel permits are direct successors to the travelling performers' permits introduced pursuant to the circular of 6 January 1863 and then the "anthropomorphic nomad identity cards" introduced under the Act of 16 July 1912. Successive laws have maintained the principle of requiring travel cards. The author is thus subject to regular police checks, which, he asserts, are a clear infringement of his right to liberty of movement within his country, as provided for in article 12 of the Covenant. He rejects the conclusions of the Court of Appeal of Angers (see para. 2.4), observing that he has not chosen his way of life but is heir to a long family tradition, on both his father's and his mother's sides of the family, of living in a mobile shelter.[6] He adds that he was brought up in that way, that his brothers and sisters live the same way, that he has never lived in a house and that life on the road is the only way of life that he has ever known.

3.3 In respect of equality before the law, the author points out that, under French law, the domicile of any citizen, for the purpose of exercising his or her civil rights, is "the place

[5] There is a procedure under which national courts may request the Court of Justice of the European Union for its interpretation or view on the validity of European law in the context of a case before it.

[6] The author encloses a copy of his family tree.

of his or her main place of residence".[7] However, Travellers, who are subject to Act No. 69-3 of 3 January 1969, do not have a domicile and reside habitually in a land-based mobile shelter. Rather than mentioning a domicile, the specific legal regime applicable in this case requires that persons register with a commune for administrative purposes; they are not free to choose or to change that commune, contrary to the rights provided for by articles 103 et seq. of the Civil Code, on change of domicile. The author submits that he does not have the same civil rights as citizens who have a fixed residence.

3.4 According to the author, the unfavourable treatment of persons subject to the stamp system constitutes legally sanctioned internal and external discrimination. It is legally sanctioned because it is laid down by the law. It is internal because, of those required to hold the travel permits provided for by Act No. 69-3, persons who practise itinerant activities or trades are not subject to the stamp system. Other persons of no fixed abode, such as those living in houseboats (bargees) or on the street, are not subject to the administrative requirement to have a travel permit either. The author argues that the discrimination is also external because the vast majority of the population, who live in fixed residences as defined in article 2 of Decree 70-708 of 31 July 1970 and therefore have a domicile, have not been required to have these "passports" for the last century. The stamp system, and the travel permit system in general, thus, according to the author, infringe the freedom to come and go within a State only of those persons who are subject to them. This constitutes both internal and external discrimination against them and gives rise to inequality of rights in respect of the concept of a domicile. Accordingly, the author requests moral and material compensation, as well as to have his conviction expunged from his police record. He demands to be placed on an equal footing with all his fellow-citizens, i.e., to be able to maintain his way of life and have the right to have a domicile as provided for in the Civil Code, as well as the freedom to change and to choose that domicile, without being obliged to have and to present a travel permit on pain of being found guilty of an offence.

State party's observations on admissibility

4. On 29 September 2010, the State party submitted its observations on admissibility, arguing that the communication should be declared partially inadmissible for non-exhaustion of domestic remedies. According to the State party, the author has argued before the Committee that he does not have the freedom to choose or to change his place of residence. However, before the national courts, the contentious proceedings dealt only with the lack of a stamp in his travel card. This is the only offence for which domestic remedies have been exhausted. In this respect, the State party is of the view that the matters described in the communication concerning the choice of commune of registration are completely unrelated to the issue considered by the national courts and are thus inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

State party's observations on the merits

5.1 On 28 January 2011, the State party submitted its observations on the merits of the communication. It again argues that the author's allegations concerning the choice of his commune of residence were not raised in the national courts. Furthermore, according to the State party, the author cites only the provisions of the French Civil Code regarding the commune of registration, without specifying which provisions of the Covenant have allegedly been breached. Accordingly, this part of the communication should be considered inadmissible.

[7] Civil Code, art. 102.

On the freedom to choose and to change the commune of registration

5.2 On the merits, the State party begins by addressing the question of freedom of choice and of a commune of registration. It recalls that the habitual residence of the persons covered by Act No. 69-3 of 3 January 1969 is, by definition, a mobile residence: "a vehicle, trailer, or any other mobile shelter", according to article 3 of the Act. To ensure that persons who have such a residence can enjoy and exercise their civil and political rights and fulfil their duties, legislators developed the system of a commune of registration to allow such persons to maintain a link with the administrative authorities. According to the State party, this address is used purely for administrative purposes and does not constitute a residence within the meaning of article 12 of the Covenant. The permanent residence of such persons is their trailer or other mobile shelter, and their place of residence is where that mobile shelter is at any given time. The right to free choice of residence, protected under article 12 of the Covenant, therefore applies only to the author's permanent residence, which is by nature mobile.

5.3 The State party adds that, contrary to the author's claims, a person travelling in France who has no fixed abode or residence can choose the commune in which he or she wishes to be registered for administrative purposes, but must provide a valid reason for that choice (family ties, for example). The prefect may not overrule that choice except for serious reasons, related, in particular, to public order, and must issue an explicitly substantiated decision in such cases.[8] In consequence, according to the State party, the restrictions that are placed on the right to freely choose one's commune of registration are extremely limited and are in compliance with article 12, paragraph 3, of the Covenant, which provides that this right may be subject to restrictions when these are "provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".

5.4 As regards article 26 of the Covenant, which the author invokes, the State party argues that article 7 of the Act of 3 January 1969 provides that "any person who requests the issuance of a travel permit (...) is required to make known the commune in which he or she wishes to be registered". The choice of commune of registration thus applies to any person over the age of 16 who has not had a fixed residence for more than six months, if he or she dwells permanently in a vehicle, trailer or any other mobile shelter (art. 3). Referring to the Committee's general comment No. 18 (1989), on non-discrimination,[9] the State party also adds that registration with a commune enables a person travelling in France who has no fixed abode or residence to effectively enjoy and exercise his or her civil and political rights, including the right to vote. The Committee has indicated that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance.[10] The establishment of a specific legal regime for persons travelling who have no fixed abode or residence does indeed take account of the specific characteristics of their situation. In any event, it cannot, according to the State party, be argued that the author and all other persons in his situation are, as he contends, deprived of their right to have a domicile, as guaranteed by French civil law. There is no legal obstacle that would prevent a person living in a mobile residence from changing his or her way of life and choosing a domicile within the meaning of article 102 of the Civil Code. However, in the context of an itinerant way of life, registration with a commune provides a means of exercising one's rights and does not entail any discrimination.

---

[8] Article 23 of Decree No. 70-708 of 31 July 1970 (see note 3 above).

[9] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40*, vol. I (A/45/40 (Vol. I)), annex VI, sect. A, para. 7.

[10] Idem, para. 8.

The travel card

5.5 As regards the matter of the travel permit and the obligation to have it stamped, which the author considers a clear infringement of his right to liberty of movement within the country, the State party recognizes that the constraints entailed by this requirement constitute a restriction within the meaning of article 12, paragraph 3, of the Covenant, but contends that the restriction is laid down by law and is justified for reasons of public order. According to the State party, the fact that persons of no fixed abode who do not show proof of a regular income have an obligation to have their travel card stamped at regular intervals is the counterpart of their recognized right to change their place of residence every day, if they so wish. This requirement allows the administrative authorities to maintain a link with them and makes it possible for the authorities to contact them, as well as, where necessary, to conduct checks under conditions that take account of their itinerant way of life.

5.6 Considering the travel permit requirement in the light of article 26 of the Covenant, the State party argues that the obligation to have the permit stamped is not restricted to a specific community, but applies to all persons over the age of 16 who have not had a fixed abode or residence for more than six months if they dwell permanently in a vehicle, trailer or any other mobile shelter (Act of 3 January 1969, art. 3). Thus, any person who chooses to adopt an itinerant way of life, as defined above, must have a travel permit, which must be stamped by the administrative authorities at regular intervals. Accordingly, fairground workers and caravaniers (employees working on large building sites) are also required to have travel permits. The State party adds that, contrary to the author's claims, the itinerant way of life is, from a legal point of view, indeed the choice of the person concerned, a choice which is respected by the public authorities.

5.7 In conclusion, the State party reiterates that the specific regime applicable to the author and to other people in the same situation is a consequence of their high level of mobility, as compared to persons who have adopted a sedentary lifestyle. The difference in treatment is therefore objectively justified by the difference between their situations. Finally, the State party adds that the author's claims concerning the travel permit do not reflect the unanimous position of all Travellers, because some members of that community felt that these documents were highly valuable as identity papers.

Authors' comments on the State party's observations on the merits

6.1 The author responded to the State party's observations on the merits on 4 April 2011.

On the claim in relation to article 12

6.2 The author does not dispute the fact that the requirement to register with a commune does not contravene the principle of the freedom of choice of residence, guaranteed under article 12. He specifies that it is the principle of freedom of movement that he wishes to assert. The author notes that a French citizen who has a fixed residence is not obliged to possess an administrative document in order to move about the country. In addition, other persons of no fixed residence, such as bargees and homeless persons, are not obliged to have a special administrative document either. People considered to be "travelling" are the only ones who are invariably subject to this system, under the Act of 3 January 1969. According to the author, the simple possession of such a permit, which for some has become a symbol of their identity, would not be so serious if failure to have the permit did not make a person liable to criminal penalties, including fines and terms of imprisonment, if such a person is found to be travelling without a permit or without proof of the possession of the permit. In addition, the obligation to have the travel card stamped by the police at regular intervals, on pain of criminal penalties, constitutes a serious infringement of the freedom of movement.

6.3 The system also makes it possible, each time the permit holder requests a stamp, for the authorities to check the wanted-persons file, which includes those persons wanted on administrative and judicial grounds.[11] The author adds that the system of travel permits makes it possible for the police to maintain a special file on persons of no fixed abode or residence. That file currently comprises more than 200,000 records.[12] The National Commission for Information Technology and Civil Liberties, as well as other interested persons, has drawn attention to the existence of undeclared databases and messages linked to the file on persons of no fixed abode or residence. This case has also given an opportunity to disseminate a confidential internal gendarmerie document dating from 1992, entitled *La criminalité de certaines minorités ethniques non sédentarisées* (criminality among certain non-sedentary ethnic minorities). According to the author, this terminology clearly refers to Travellers. The document states that almost a third of the 120,000 individuals whose names figure in the administrative file of persons of no fixed abode or residence are known offenders. It also notes that "it is up to staff, in particular, to make a clear distinction between individuals classified as persons of no fixed abode or residence, who can be required to produce their administrative documents ...without following any particular procedure and persons who are settled, whose identity documents are checked within the legal framework defined by articles 78-1 to 78-5 of the Code of Criminal Procedure". According to the author, such guidelines provide clear evidence of the specific and discriminatory nature of travel permit checks. The checks involve the use of police intelligence related specifically to the Traveller population, described as a "non-settled ethnic minority", who are subject to specific, systematic and stigmatizing checks made possible by the travel permit system.

On the claim in relation to article 26

6.4 The author again asserts that the Travellers' way of life should be analysed from a sociological standpoint that takes into account the cultural capital handed down from generation to generation and goes beyond a legal analysis of individual "choice". Although living in a fixed structure is the norm today, this mode of life should not be imposed on persons who have never experienced it. The author recalls that he has never known anything other than the Travellers' way of life and that his family — going back as far as his great-grandparents — has led an itinerant way of life and practised itinerant trades. He adds that, beyond the restriction that they place on the freedom of movement, travel permits are also just one of the ways in which Travellers are treated differently from the rest of the population. Although the justification given is the mobility of this population group, it appears that other mobile populations, such as bargees, travelling salespeople and homeless persons, are not subject to the same types of checks. Furthermore, the way that Travellers are defined is related not to their mobility, but to the fact that they have been dwelling in mobile shelters for at least six months.[13] However, the lack of a fixed residence, cited by the State party as justification for the specific treatment of Travellers, is also common to bargees, nomads and fairground workers. These people used to be considered to be on an equal footing, under Ordinance No. 58-923 of 7 October 1958,[14] which gave these three

[11] Decree of 15 May 1996 concerning the wanted persons file, maintained by the Ministry of the Interior and the Ministry of Defence.

[12] The author explains that this file, which was created under the terms set out in a decree of 22 March 1994, is managed by the national gendarmerie. It is used for the computerized processing and monitoring of travel permits. Since 2005, it has included digital photographs of permit holders. The file may be consulted by law enforcement officials (police and gendarmerie), the prefectural services, and authorized third parties (treasury departments and health, judicial and military authorities).

[13] Act of 3 January 1969, art. 3.

[14] The author adds that the 1958 Ordinance was never implemented for practical reasons.

categories of persons the possibility of freely choosing their domicile and which had modified the Civil Code in order to do so. Although the provision relating to domiciles was maintained in the case of bargees, it was abrogated in the case of nomads and fairground workers (terms replaced in recent legislation by the category of "Travellers") by the Act of 3 January 1969, which introduced the concept of the commune of registration for these two categories. The author adds that the bill relating to the aforementioned Act shows that the introduction, in article 8 of the Act, of a quota whereby Travellers registered with a municipality could account for no more than 3 per cent of the local population was intended to ensure that the electoral situation in the municipalities concerned would not be significantly changed by any influx of voters without actual ties to the commune. According to the author, the fact that an effort was made to decrease the effective electoral representation of this sector of the population demonstrates the inequality before the law of which Travellers are victim.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that a similar complaint filed by the author (complaint No. 3257/09) was found inadmissible by the European Court of Human Rights on 1 September 2009 under article 35, paragraph 1, of the European Convention on Human Rights, since the period between the final decision at the national level (of the court of cassation) and the submission of the application was more than six months. The Committee also recalls that, upon its acceptance of the Optional Protocol, the State party entered a reservation to article 5, paragraph 2 (a), of the Protocol specifying that the Committee "shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement". The Committee notes, however, that the European Court of Human Rights has not "examined" the case in the sense of article 5, paragraph 2 (a), of the Optional Protocol, inasmuch as its decision pertained only to an issue of procedure.[15] Article 5, paragraph 2 (a), of the Optional Protocol, as modified by the State party's reservation, therefore does not represent an impediment to the examination of the communication by the Committee.

7.3 The Committee has also noted the State party's argument that the author has not exhausted domestic remedies with regard to the issue of the choice and change of domicile under the system of registration introduced by the Act of 3 January 1969 (art. 7 et seq.). The Committee observes that the author does not contest this argument and that he has also specified that, of the safeguards set forth in article 12, paragraph 1, he wishes to assert only the right to liberty of movement. Accordingly, the Committee declares the part of the communication relating to choice and change of domicile inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.4 The Committee considers that all other criteria for admissibility have been met and declares the communication admissible in respect of the arguments put forward by the

[15] See communications No. 1505/2006, *Vincent v. France*, inadmissibility decision of 31 October 2007, para. 7.2; No. 1389/2005, *Bertelli Gálvez v. Spain*, inadmissibility decision of 25 July 2005, para. 4.3; and No. 1446/2006, *Wdowiak v. Poland*, inadmissibility decision of 31 October 2006, para. 6.2.

author under articles 12, paragraph 1 (in respect of liberty of movement), and 26 of the Covenant.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the author's claim that, by fining him 150 euros for the criminal offence (reduced by the Court of Appeal of Angers to a fine of 50 euros) of lacking a valid stamp on his travel permit, the State party allegedly acted in violation of its obligations to guarantee him: (1) the right, under article 12, paragraph 1, of the Covenant to move about freely within the territory of the State party; and (2) his right, under article 26 of the Covenant, to equality before the law and equal protection of the law, without discrimination. The Committee notes the State party's argument that the restrictions imposed on the application of article 12 by Act No. 69-3 of 3 January 1969 are consistent with paragraph 3 of that article because they are justified by reasons of public order. In particular, it asserts that the requirement to have a stamped travel permit permits the maintenance of an administrative link with members of the itinerant population and to carry out checks as necessary.

8.3 The Committee recalls its general comment No. 27 (1999) on freedom of movement, in which it states that the limitations that may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.[16] Article 5 of Act No. 69-3 of 3 January 1969, which was applicable to the author at the time of the events in question, required persons who had had no fixed abode or residence for more than six months, who were living in a mobile shelter and had no regular income to have a travel card which had to be stamped every three months in order for them to be able to travel in France. Article 20 of Decree No. 70-708 of 31 July 1970 also provides that, in the event of failure to obtain such a stamp within the prescribed period, the person concerned will be liable to a fine corresponding to a category 5 minor offence.[17] This provision clearly places a restriction on the exercise of the right to liberty of movement by the persons in question (art. 12, para. 1). The Committee must therefore determine whether such a restriction is authorized by article 12, paragraph 3, of the Covenant.

8.4 It is not disputed that an obligation to have a travel permit and to have it stamped at regular intervals by the authorities is established under the Act. The Committee takes note of the State party's statement that the objective of these measures is to help to maintain public order. It is therefore incumbent upon the Committee to assess whether this restriction is necessary and proportionate to the aim pursued.[18] The Committee recognizes the State party's need to check, for the purposes of maintaining security and public order, that persons who regularly change their place of residence are and remain identifiable and contactable.

---

[16] See general comment No. 27 (1999), *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A, para. 2.

[17] See note 4 above. Article 131-13 of the Criminal Code provides that category 5 minor offences are punishable by a fine of a maximum of 1,500 euros; this amount may be increased to 3,000 euros in the case of a repeat offence.

[18] General comment No. 27, para. 14.

8.5 The Committee observes, however, that the State party has not demonstrated that the obligation to have the travel card stamped at frequent intervals or to make failure to fulfil that obligation subject to criminal charges (Decree No. 70-708 of 31 July 1970, art. 20) are measures that are necessary and proportionate to the end that is sought. The Committee concludes that this restriction of the author's right to liberty of movement is not compatible with the conditions set forth in article 12, paragraph 3, and consequently constitutes a violation of article 12, paragraph 1, in his regard.

8.6 In the light of its finding in respect of article 12, paragraph 1, the Committee will not consider separately the claims based on the violation of article 26 of the Convention.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 12, paragraph 1, of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is required to provide the author with an effective remedy by, inter alia, expunging his criminal record and providing him with adequate compensation for the harm suffered, and to review the relevant legislation and its application in practice, taking into account its obligations under the Covenant. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive information from the State party, within 180 days, concerning the measures taken to give effect to the Committee's Views. The State party is also invited to publish the present Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian, as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion of Mr. Fabián Omar Salvioli (concurring)

1. I agree with the Committee's decision in the case of *Ory v. France* (communication No. 1960/2010), in which it found a violation by the State party of article 12 of the International Covenant on Civil and Political Rights with respect to the victim.

2. However, I regret that in its decision the Committee did not find it necessary to explore the author's serious claims[19] concerning the violation of article 26 of the Covenant.[20] The Committee has remained silent on two key human rights issues, namely equality before the law and non-discrimination, which lie at the heart of the communication.

3. In this case, it has been sufficiently substantiated that there is discrimination against a specific group of individuals (namely, members of the "Traveller communities"), many of whom — including the author — are of French nationality. For administrative and legal purposes, the "commune of registration" is sufficient for the State's purposes (namely, the need to maintain a link with the administrative authorities). However, the State has been unable to show or justify an additional need for members of the "Traveller communities" to have a travel card stamped on a regular basis.

4. In its response to the communication, the State cites as reasons for the travel permit requirement the need to maintain a link between the State and members of Traveller communities and to carry out "checks".[21]

5. Regarding the first of the State's reasons, such a link is perfectly well maintained by requiring members of the Traveller communities to register with a commune as provided for in article 7 of Act No. 69-3.[22]

6. As for the need to make "checks", the State's arguments are far too general, and it gives no reasonable explanation as to why these persons must be subject to special checks.

7. The Committee has previously defined the parameters of the principles of equality and non-discrimination by stating that a rule or measure that is apparently neutral or lacking any intention to discriminate can have a discriminatory effect resulting in a violation of article 26 if the detrimental effects of the rule or decision exclusively or disproportionately affect persons of a particular race, colour, sex, language, religion, political or other opinion, national or social origin, financial status, birth or other status. However, rules or decisions with such an impact do not amount to discrimination if they are based on objective and reasonable grounds.[23]

8. In special situations States may adopt differentiated measures, but these must pursue a legitimate aim, be provided for by law and, above all, be reasonable and proportionate. In this case, the requirement for members of the "Traveller communities" to have their travel

[19] As set out in the Committee's Views, paras. 3.3 and 3.4, and later in para. 6.4.

[20] The Committee's Views, para. 8.6.

[21] See the Committee's Views, para. 5.5.

[22] No changes were made to the "commune of registration" system in the recent revision of the Act.

[23] General comment No. 18 on article 26, HRI/GEN/1/Rev.9 (Vol. I), 10 November 1989; see also communication No. 1474/2006, *Prince v. South Africa*, Views adopted on 31 October 2007, para. 7.5, and communication No. 998/2001, *Althammer et al. v. Austria*, Views adopted on 8 August 2003, para. 10.2.

permits stamped regularly does not meet the tests of reasonableness, necessity and proportionality. Consequently, the Committee should have concluded that article 26 of the Covenant was also violated with respect to the author of the communication, and the State should take this into account when providing redress, including by abolishing the stamp requirement so as to ensure that such violations are not repeated.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]